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BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this “Agreement”) is made this ____ day of _____, 201_, by and between the [organization], a [organization type] located at [address] (“Business Associate”), and [entity] located at [address] (“Covered Entity”).

RECITALS

WHEREAS, Covered Entity may have disclosed certain information to Business Associate in the course of Business Associate’s performance of certain services on behalf of Covered Entity (“Services”) pursuant to one or more service agreements (each a “Services Agreement”) which may have included protected health information; and

WHEREAS, Covered Entity and Business Associate may have entered into one or more Business Associate Agreements in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, and the regulations promulgated under 45 C.F.R. Parts 160 and 164, as amended (the “Privacy Rule” and “Security Rule”) (which are collectively referred to herein as “HIPAA”); and

WHEREAS, Business Associate provides Services to Covered Entity, and in the course of providing such Services, Business Associate may create, receive, maintain or transmit on behalf of Covered Entity, or otherwise receive from Covered Entity, certain Protected Health Information (“PHI”); and

WHEREAS, Covered Entity and Business Associate wish to protect the privacy and provide for the security of PHI Disclosed to Business Associate in compliance with HIPAA; 22 M.R.S.A. § 1711-C (“[State] Confidentiality Law”); 10 M.R.S.A. § 1346 et seq. (“Maine’s Notice of Risk to Personal Data Act”) and other applicable laws and regulations governing the privacy and security of PHI; and

WHEREAS, Business Associate and Covered Entity desire to cancel all other Business Associate Agreements previously entered into by the parties and replace such Business Associate Agreements with this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, terms and conditions herein contained and as a condition precedent to Business Associate continuing to provide Services to Covered Entity, Business Associate and Covered Entity hereby agree as follows:

1. **Definitions.** Capitalized terms used but not otherwise defined herein shall have the meanings provided under HIPAA, as amended.
2. **Business Associate’s Uses and Disclosures of PHI.**
 - (a) **Limitations on Uses and Disclosures of PHI.** Business Associate shall not Use or Disclose PHI in any manner that would violate HIPAA, [State] Confidentiality Law, or other applicable law or regulation governing the privacy of PHI.
 - (b) **Permitted Uses and Disclosures under this Agreement.** Business Associate may Use and Disclose PHI on behalf of, or to provide Services to, Covered Entity for the purposes authorized by Covered Entity in this Agreement, the Services Agreement or through specific oral instruction, or as Required by Law.

(c) **Permitted Uses and Disclosures for Management and Administration of Business Associate.**

- (i) **Permitted Uses.** Business Associate may Use PHI for the proper management and administration of Business Associate or to carry out its legal responsibilities or for the data aggregation purposes relating to the Health Care Operations of Covered Entity.
- (ii) **Permitted Disclosures.** Business Associate may Disclose PHI for the proper management and administration of Business Associate, provided the Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Business Associate shall obtain and maintain a written agreement with each person to whom information is Disclosed pursuant to which such person agrees to be bound by the same restrictions, terms and conditions that apply to Business Associate pursuant to this Agreement.
- (iii) **Reporting Violations of Law.** Business Associate may Disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

3. **Obligations and Activities of Business Associate.**

- (a) **Minimum Necessary Information.** Business Associate represents that, to the extent it requests Disclosure of PHI from Covered Entity, such request shall be limited to the Minimum Necessary PHI required by Business Associate to adequately provide Covered Entity with the Services described in Section 2(b). Covered Entity represents that, to the extent it Discloses PHI to Business Associate, such Disclosure shall be limited to the Minimum Necessary PHI required by Business Associate to adequately provide Covered Entity with the Services described in Section 2(b). Business Associate shall limit, to the extent practicable, its Use and Disclosure of PHI to the Minimum Necessary to accomplish the intended purpose of such Use or Disclosure as defined under HIPAA.
- (b) **Safeguards Against Misuse of Information and Mitigation.** Business Associate shall use appropriate safeguards to prevent the Use or Disclosure of PHI other than as permitted under this Agreement. In addition, Business Associate agrees to take steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure by Business Associate, or its employees, contractors, or agents in violation of this Agreement.
- (c) **Prohibition on Remuneration.** Business Associate shall not receive remuneration directly or indirectly in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by HIPAA. Notwithstanding the foregoing, this provision shall not prohibit payment by Covered Entity for Services provided by Business Associate pursuant to the Services Agreement or another separate services agreement between Business Associate and Covered Entity.
- (d) **Reporting Breaches.** Business Associate shall report promptly to Covered Entity any unauthorized acquisition, access, Use or Disclosure of PHI in violation of HIPAA, [State] Confidentiality Law, [State]'s Notice of Risk to Personal Data Act of which it becomes

aware. Such report shall be made without unreasonable delay but in no event later than twenty (20) calendar days after discovery by Business Associate of such Breach. Each report of a Breach shall include, to the extent possible, the following information: (i) a description of the facts pertaining to the Breach, including, without limitation, the date of the Breach and the date of discovery of the Breach, (ii) a description of the PHI involved in the Breach, (iii) the names of the individuals who committed or were involved in the Breach, (iv) the names of the unauthorized individuals or entities to whom PHI has been Disclosed, (v) a description of the action taken or proposed by the Business Associate to mitigate the financial, reputational or other harm to the individual who is the subject of the Breach, and (vi) provide such other information as Covered Entity may reasonably request, including, without limitation, the information, data and documentation required by Covered Entity to timely comply with HIPAA.

- (e) **Administrative Safeguards.** Business Associate agrees to comply with the administrative safeguards under HIPAA.
- (f) **Access to Information.** Business Associate shall make PHI maintained by Business Associate or its agents or subcontractors available to Covered Entity within twenty (20) calendar days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under HIPAA. In the event any individual requests access to PHI directly from Business Associate, it shall forward such request to Covered Entity within five (5) calendar days. Covered Entity shall determine whether and to what extent access shall be granted or denied and shall notify the individual requesting access of its decision. Such determination shall be the sole responsibility of Covered Entity.
- (g) **Availability of PHI for Amendment.** Promptly upon receipt of a request from Covered Entity to amend an individual's PHI or a record regarding an individual, Business Associate shall either provide such information or record to Covered Entity for amendment and incorporate any such amendments to the PHI in the possession or under the control of Business Associate as required by 45 C.F.R. § 164.526, or make such amendments to said PHI as may be directed, in writing, by Covered Entity. If any individual requests such amendment of PHI directly from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity in writing of the request within five (5) calendar days.
- (h) **Availability of Internal Practices, Books and Records.** Business Associate agrees to make available to the Secretary of the U.S. Department of Health and Human Services its internal practices, books and records relating to the Use and Disclosure of PHI received from, or created or received by, Business Associate on behalf of, Covered Entity.
- (i) **Documentation of Disclosures.** Business Associate agrees to document Disclosures by it and its subcontractors or agents, of PHI and other information related to such Disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (j) **Accounting of Disclosures.** Within twenty (20) calendar days of receipt of a notice from Covered Entity of a request for an accounting of Disclosures of PHI, Business Associate and its subcontractors and agents shall make such information required by 45 C.F.R. § 164.528 available to Covered Entity. If an individual requests such accounting directly from Business Associate or its subcontractors or agents, Business Associate shall forward such request to Covered Entity within five (5) calendar days.

- (k) **Safeguards.** Business Associate shall implement administrative safeguards (45 C.F.R. § 164.308), physical safeguards (45 C.F.R. § 164.310) and technical safeguards (45 C.F.R. § 164.312) in accordance with HIPAA that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI (“ePHI”) that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity, or receives from Covered Entity, and maintain appropriate documentation of such safeguards (45 C.F.R. § 164.316). In addition, Business Associate shall ensure that any agent or subcontractor to whom it provides ePHI agrees, in writing, to implement reasonable and appropriate safeguards to protect such ePHI.
- (l) **Security Incident Reports.** Business Associate shall notify Covered Entity, in writing, of any Security Incident within twenty (20) calendar days of becoming aware of such incident. “Security Incident” shall mean an actual unauthorized access, Use, Disclosure, modification or destruction of information or interference with systems operations in an information system used by or on behalf of Business Associate in the performance of the Services under this Agreement.
- (m) **Compliance with Existing Law.** Business Associate acknowledges and agrees that, as of the effective dates for such provisions, Business Associate shall comply with HIPAA and other applicable law. The parties shall comply with and take any further action, including amendment of this Agreement, required to ensure continued compliance with HIPAA, [State] Confidentiality Law and any other applicable federal or state law as amended from time to time. Covered Entity may terminate the Business Associate Agreement upon thirty (30) days written notice in the event Business Associate does not take such action to ensure compliance with applicable federal and state law as amended.

4. **Obligations of Covered Entity.**

- (a) **Notice of Privacy Practices.** Covered Entity agrees to provide individuals with notice of its privacy practices and obtain acknowledgment of receipt thereof in compliance with 45 C.F.R. § 164.520. In addition, Covered Entity shall promptly provide Business Associate with a copy of its privacy practices in accordance with 45 C.F.R. § 164.520, as well as any modifications thereto.
- (b) **Changes In or Revocation of Permission by Individuals.** Covered Entity shall promptly notify Business Associate, in writing, of any changes in, or revocation of, an individual's permission to Use or Disclose PHI, if such changes or revocation affects Business Associate's permitted or required Uses and Disclosures.
- (c) **Covered Entity’s Agreements to Restrict Use or Disclosure.** In the event Covered Entity agrees to restrict the Use and/or Disclosure of PHI in accordance with 45 C.F.R. § 164.522, it shall promptly notify Business Associate, in writing, of the nature and extent of said restriction.

5. **Term and Termination.**

- (a) **Term.** The term of this Agreement shall commence on the date written above and shall terminate when all PHI created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, is returned to Covered Entity, or destroyed at the request of Covered Entity.
- (b) **Termination for Cause.** In compliance with HIPAA, including, without limitation, 45 C.F.R. § 164.504(e)(2)(iii), Covered Entity shall be entitled to take any one or more of

the following actions whenever it reasonably determines that Business Associate has breached a material provision of this Agreement:

- (i) Immediately terminate any agreement between Covered Entity and Business Associate pursuant to which Business Associate provides Services to or on behalf of Covered Entity which requires Business Associate to have access to and/or Use of PHI;
 - (ii) Immediately cease further Disclosure of PHI to Business Associate; and/or
 - (iii) Notify Business Associate, in writing, of the existence of such Breach and give Business Associate an opportunity to cure upon mutually agreeable terms. In the event Business Associate fails, for any reason, to cure the Breach, or in the event Covered Entity reasonably believes that Business Associate and Covered Entity are unable to mutually agree on the terms of cure, Covered Entity may immediately terminate any agreement between Business Associate and Covered Entity which requires Business Associate to have access to and/or Use of PHI.
- (c) **Return of PHI.** Upon the request of Covered Entity, Business Associate shall return all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity and which Business Associate maintains in any form or over which it has control. Alternatively, with the prior written consent of Covered Entity, Business Associate may destroy such PHI. Destruction shall include destruction of all copies including backup tapes and other electronic backup medium.

6. **Notices.** All notices pursuant to this Agreement must be given in writing and shall be effective when received if hand-delivered or when sent by overnight delivery service, facsimile or U.S. Mail to the appropriate address of the receiving party.

7. **Miscellaneous.**

- (a) **Survival.** The respective rights and obligations of the parties under Section 4(c) shall survive the expiration or termination of this Agreement.
- (b) **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with HIPAA and the regulations thereunder, [State] Confidentiality Law and other applicable law and regulation. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies with and is consistent with HIPAA. The parties agree that individuals who are the subject of PHI are not third-party beneficiaries of this Agreement.
- (c) **Prior Agreements.** This Agreement shall cancel and supersede all other Business Associate Agreements between the parties.
- (d) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and no amendments or additions to this Agreement shall be binding unless in writing and signed by both parties. It is expressly understood and agreed that no verbal representation, promise or condition, whether made before or after the signing of this Agreement, shall be binding upon any of the parties hereto.

- (e) **Governing Law.** This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance or otherwise, by the laws of the State of [State] except to the extent preempted by HIPAA.
- (f) **Severability.** In the event that any provision of this Agreement violates any applicable statute, regulation or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.
- (g) **Headings.** The section headings in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this Agreement.
- (h) **Parties.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- (i) **Effective Date.** The particular provisions of this Agreement shall become effective as of the date or dates established by the U.S. Department of Health and Human Services or the United States Congress for the effectiveness of the particular provision. All other provisions of this Agreement shall be effective as of the day and year first written above.
- (j) **Counterparts; Facsimiles.** For the convenience of the parties, this Agreement may be executed in two or more identical counterparts, all of which together shall constitute one agreement. One or more counterparts of this Agreement may be delivered via facsimile or electronic mail, with the intention that they shall have the same effect as an original counterpart.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers or representatives as of the day and year first written above.

BUSINESS ASSOCIATE

By: _____
 Name:
 Title: President and CEO

COVERED ENTITY

By: _____
 Name:
 Title: